

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES OFFICE OF**  
**CONSERVATION AND COASTAL LANDS**  
**Honolulu, Hawaii**

April 27, 2007

CDUP: KA-3142

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Time Extension Request for Conservation District Use Permit (CDUP) KA-3142 for A Single Family Residence Located at Haena, Island of Kauai, TMK: (4) 5-9-005:020

**LANDOWNER/  
APPLICANT:** Ed and Joan Bendor

**SUBZONE:** Limited

**BACKGROUND:**

The Board of Land and Natural Resources approved CDUP KA-3142 on June 18, 2004 for a Single Family Residence (SFR) located at Haena, Island of Kauai, TMK: (4) 5-9-002:020 subject to twenty-four (24) terms and conditions. Condition # 10 notes, "Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources (Department), and unless otherwise authorized, shall be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated, and when it is completed." (**Exhibits 1**).

On May 13, 2005, the Department approved the request for a first time extension on the construction initiation deadline to June 18, 2006, with the deadline for completion by June 18, 2007 (**Exhibit 2**).

**TME EXTENSION REQUEST:**

On March 27, 2007, the Office of Conservation and Coastal Lands (OCCL) was in receipt of a correspondence by Ed and Joan Bendor requesting a one-year time extension to complete the construction of the SFR. According to the correspondence, the difficulty

in procuring concrete, the logistics of the isolated location of Haena and the labor shortage has affected the timeliness of completion of the project (**Exhibit 3**).

#### **AUTHORITY FOR GRANTING TIME EXTENSIONS:**

The authority for the granting of time extensions is provided in Section 13-5-43, Hawaii Administrative Rules (HAR), which allows for permittees to request time extensions for the purpose of extending the period of time to comply with the conditions of a permit.

Additionally, §13-5-43, HAR, states that: "All time extensions shall be submitted to the department thirty days before the expiration deadline. If a request is received less than thirty days before the due date the request for time extension shall be forwarded to the Board for review."

Further, Section 13-5-43, HAR provides that time extensions may be granted by the Board upon the second or subsequent request for a time extension, based on supportive documentation from the applicant.

#### **BASIS FOR TIME EXTENSIONS:**

A time extension may be sought when a Permittee is unable to initiate or complete a project within the stipulated time frame. The Board grants time extensions when a Permittee demonstrates some sort of hardship or delay in initiating work on a particular project. Moreover, the Permittee should be able to demonstrate that the hardship or delay has not been self-imposed and that some good faith effort has been made to undertake the project.

#### **DISCUSSION:**

In the present case, none of these factors suggest any reason to deny the requested time extension. The Permittee has submitted all the required documents to obtain permits and approvals to initiate project construction. Approval of the time extension request will hopefully provide the additional time needed to complete the home.

Staff, therefore, has the following:

#### **RECOMMENDATION:**

That the Board of Land and Natural Resources **APPROVE** the one year time extension to June 18, 2008 to complete the construction of the Single Family Residence, subject to the following conditions:

1. That condition 10 of CDUA HA-3137 is amended to provide that the Permittee has until June 18, 2008 to complete construction of the Single Family Residence; and

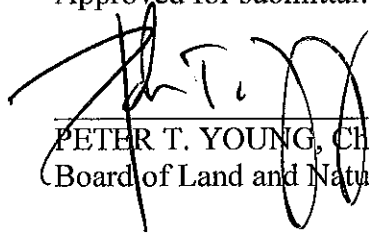
2. That all other conditions imposed by the Board under CDUP KA-3142, as amended, shall remain in effect.

Respectfully submitted,



K. Tiger Mills, Staff Planner  
Office of Conservation and Coastal Lands

Approved for submittal:



PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

## DECISION AND ORDER

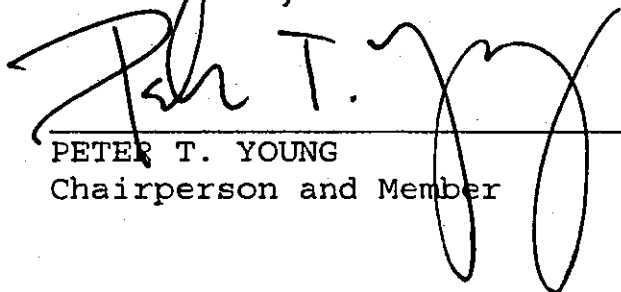
Based upon the above findings of fact and conclusions of law, the Board hereby grants the application and orders the issuance of the conservation district use permit subject to the special and standard conditions as set forth in the DLNR Staff Report, with the following modifications:

1. Condition 7 will be modified to state: "7. The size of the structure shall not exceed 3,000 square feet."
2. Condition 8 will be modified to state: "8. The structure shall be set back at least 70 feet from the certified shoreline."
3. A new condition 8(a) will be added which shall state: "The applicants will not apply for permits to develop, nor will Applicants build or develop any seawalls or shoreline hardening measures."

The Applicants' petition for deletion of conditions 7 and 8 from the staff submittal dated October 24, 2003 is denied.

DATED: Honolulu, Hawaii,

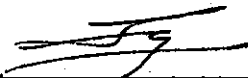
June 18, 2004



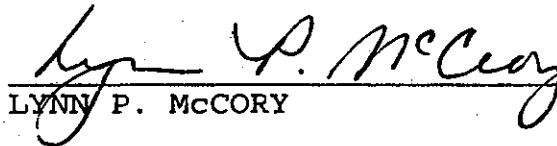
PETER T. YOUNG  
Chairperson and Member

\_\_\_\_\_  
GERALD L. DEMELLO

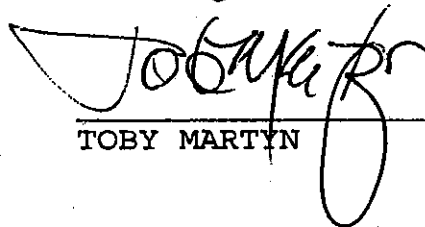
EXHIBIT I

  
\_\_\_\_\_  
TED K. YAMAMURA

  
\_\_\_\_\_  
KATHRYN W. INOUE

  
\_\_\_\_\_  
LYNN P. MCCORY

  
\_\_\_\_\_  
TIMOTHY E. JOHNS

  
\_\_\_\_\_  
TOBY MARTYN

In the Matter of Conservation District Use Application for  
Construction of a Single Family Residential Dwelling located at  
Haena, District of Hanalei, Island and County of Kauai,  
identified as TMK: (4)5-9-05:20, DLNR File No. KA-04-07,  
Findings of Fact, Conclusions of Law, Decision and Order

Staff reported all of these concerns in detail to the consultant for the landowner (Exhibit 9). It is staff's understanding that that the landowner is not willing to make any adjustments in the project design. In any case, staff recommends that the Board APPROVE this application, with the following terms, conditions, and qualifications:

**RECOMMENDATION:**

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources (Board) APPROVE this application to construct a Single Family Residence at Haena, Kauai with the following terms, conditions, and qualifications:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the federal, State and county governments, including the single family residential standards identified in Exhibit 4 of Chapter 13-5, HAR, and the County of Kauai's Flood Ordinance Standards and Building Permit requirements;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules;
4. The single-family dwelling shall not be used for rental or any other commercial purposes unless approved by the Board;
5. The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies of the plans and specifications will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies. No plans shall be approved until the applicant complies with conditions seven (7), eight (8), and eighteen (18) of this report;

7. The size of the structure shall not exceed 2,500 square feet;
8. The structure shall be setback at least 100 feet from the shoreline;
9. No breakaway walls shall be installed on the bottom section of the dwelling at any time;
10. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources (Department), and unless otherwise authorized, shall be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated, and when it is completed;
11. All mitigation measures set forth in the application materials and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;
12. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
13. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
14. Potable water supply and sanitation facilities shall have the approval of the appropriate agencies;
15. Where any polluted run-off, interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the polluted run-off, interference, nuisance, harm, or hazard;
16. During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;
17. Cleared areas shall be re-vegetated within thirty days of the completion of construction unless otherwise provided for in a plan on file with the Department;

18. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
19. A qualified archaeologist shall be hired to conduct on-site monitoring during any ground disturbing work connected with construction of the residence. Prior to starting the monitoring work, an acceptable monitoring plan (scope of work) shall be submitted to the State Historic Preservation Division for review and approval. An archaeological monitoring plan must contain the following eight specifications: (A) The kinds of remains that are anticipated and where in the construction area the remains are likely to be found; (B) How the remains and deposits will be documented; (C) How the expected types of remains will be treated; (D) The archaeologist conducting the monitoring has the authority to halt construction in the immediate area of the find in order to carry out the plan; (E) A coordination meeting between the archaeologist and construction crew is scheduled, so that the construction team is aware of the plan; (F) What laboratory work will be done on the remains that are collected; (G) A schedule for report preparation; and (H) Details concerning the archiving of any collections that are made. If burials are discovered, a burial treatment plan shall be prepared for burial discoveries encountered during the project. In addition, consultation with the appropriate ethnic groups, the procedures outlined in Chapter 6E-43, shall be followed. It is necessary for the treatment plan to be prepared after consultation with native Hawaiians, such as the Kauai/Ni'ihau Islands Burial Council and the Office of Hawaiian Affairs. A report on the archaeological monitoring and any burial documentation work shall be submitted to the State Historic Preservation Division for review and approval. The report shall include: (A) Detailed drawings of burials and deposits to scale; (B) All artifacts shall be sketched and photographed; (C) Analyses of all perishable and datable remains shall be conducted; (D) Stratigraphic profiles shall be drawn and made to scale; (E) All locations of historic sites shall be on an overall map of the project area; (F) Initial significance
20. No subdivision of the lot is allowed;
21. The applicant shall be prohibited from using floodlights that are directed in an upward or outward direction;
22. The landowner shall execute a waiver and indemnity agreement prior to construction plan approval that is satisfactory to the Department;
23. Other terms and conditions as may be prescribed by the Chairperson; and

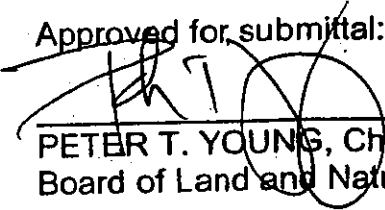


24. That failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

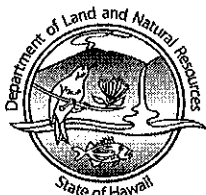
  
Sam Lemmo  
Staff Planner

Approved for submittal:

  
PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

Attachments

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR - LAND

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF: OCCL:TM

Time Extension: KA 05-3142  
Contested Case: KA 04-07

Mr. Tim Bradley, Architect  
Innovative Island Architecture  
P.O. Box 797  
Kapaa, Hawaii 96746

MAY 13 2005

Dear Mr. Bradley,

SUBJECT: Time Extension for Conservation District Use Permit (CDUP) KA-3142 Initiation of Construction of the Bendor Single Family Residence (SFR) Located at Haena, Island of Kauai, TMK: (4) 5-9-005:020

The Department is in receipt of your letter, dated April 19, 2005, regarding your request for a one-year time extension to initiate the construction of the Bendor Single Family Residence (**Exhibit 1**). According to your information, you will be completing construction drawings within the next twelve weeks and agency permit review time is substantially longer now due to the heavy volume of construction projects. Therefore you are requesting that the commencement of construction be extended.

The Board of Land and Natural Resources approved CDUP KA-3142 on June 18, 2004 for a Single Family Residence located at Haena, Island of Kauai, TMK: (4) 5-9-002:020 subject to twenty-four (24) terms and conditions. Condition # 10 notes:

"Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department of Land and Natural Resources (Department), and unless otherwise authorized, shall be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated, and when it is completed."

The Department notes, pursuant to Chapter 13-5, Hawaii Administrative Rules (HAR), Section 13-5-43, TIME EXTENSIONS (b), "time extension may be granted as determined by the Chairperson on all departmental permits and on the first request for extension of a board permit of up to two years to initiate or complete a project, based on supportive documentation from the applicant."

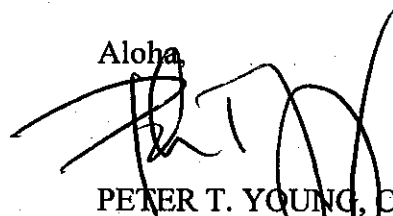
EXHIBIT 2

Therefore, the Department is granting the request of a one (1) year time extension for CDUP KA-3142 to initiate construction for a Single Family Residence located at Haena, Island of Kauai, TMK: (4) 5-9-002:020.

Construction of the Single Family Residence must commence by June 18, 2006 and construction must be completed by June 18, 2007. All other conditions imposed by the Board approval of CDUP KA-3142 shall remain in effect.

Should you have any questions regarding this matter, please contact Tiger Mills of our Office of Conservation and Coastal Lands at 587-0382.

Aloha

A handwritten signature in black ink, appearing to read 'Peter T. Young', is written over the printed name.

PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

cc: County of Kauai, Department of Planning  
KDLO

Time Extension

**TIM BRADLEY, ARCHITECT**  
INNOVATIVE ISLAND ARCHITECTURE  
P. O. BOX 797, KAPAA, KAUAI HI 96746

Phone: (808) 821-9727  
FAX: (808) 821-9726  
E-mail: bradley@hawaiiink.net

April 19, 2005

Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands  
State of Hawaii Department of Land and Natural Resources  
Post Office Box 621  
Honolulu, Hawaii 96809

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2005 APR 20 A 8:03  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Mr. Lemmo:

RE: CDUP, Extension of Time for Construction Start  
Bendor Residence at Haena, Kauai  
TMK (4th) 5-9-5: 20

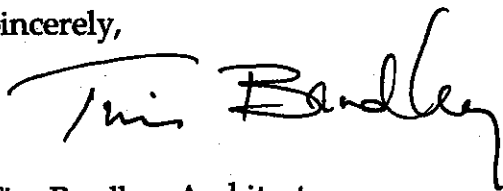
Thank you for your letter of approval dated April 15, 2005 based upon your review of revised Preliminary plans for the Bendor Residence at Haena, Kauai.

It has come to me attention that the one-year period to commence substantial construction of this residence is soon to expire. My work schedule is full and the County of Kauai's permit review time is substantially longer now due to heavy volume. My estimate of a time line from now is completion of construction drawings within twelve (12) weeks, State DNLR Approval within two (2) weeks, County of Kauai permit review of ten (10) weeks and constuction mobilization of four (4) weeks. = 7 months

Due to the schedule listed above, I am requesting that the time frame to commence substantial construction be extended by six months - 1 year.

Thank you for your help in this matter. Please call me at (808) 821-9727 if you have any questions or concerns.

Sincerely,



Tim Bradley, Architect

cc. Edi and Joan Bendor

EXHIBIT 1  
of EXHIBIT 2

March 22, 2007  
Sam Lemmo  
DLNR Conservation and Coastal Lands  
PO Box 621  
Honolulu, 96809

RECEIVED  
DEPARTMENT OF CONSERVATION  
COASTAL LANDS

2007 MAR 27 A 9:01

SUBJECT: Time extension for KA-3142 for Bendor in Haena Kauai  
TMK # (4) 5-9-002:20

DEPARTMENT OF  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Sam,

I am requesting a one year extension to complete my home as it will not be possible to fully complete by June 18, 2007.

The reasons for the delay are the difficulty in procuring concrete as well as the logistics of the isolated location in Haena. The labor shortage has been an obstacle as well. We are well beyond the foundation stage and I am comfortable with being able to complete the home by June 18, 2008.

Aloha

  
Ed and Joan Bendor

EXHIBIT 3